

"Comment" on Robert E. Hall, "Market Structure and Macro Fluctuations," *Brookings Papers on Economic Activity*, 1986:2.

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Submitted Papers and Working Papers

"Are Dividend Taxes Capitalized in Share Values?" (With T. Harris and D. Kemsley), Mimeograph, Columbia University, 1997.

"Understanding Determinants of Managerial Ownership and the Link Between Ownership and Performance" (with C.P. Himmelberg and D. Palia), Mimeograph, Columbia University, 1997.

"The World Market for Capital Goods: Does Local Policy Affect Prices?" (with K.A. Hassett), Mimeograph, Columbia University, 1996.

"Conglomerate Firms and Internal Capital Markets" (with D. Palia), Mimeograph, Columbia University, 1997; revision submitted to *Journal of Finance*.

"Financing Constraints and Corporate Investment: Response to Kaplan and Zingales," Working Paper No. 5462, National Bureau of Economic Research, February 1996.

"Corporate Payouts and the Tax Price of Corporate Retentions: Evidence from the Undistributed Profits Tax of 1936-37" (with P. Reiss), Working Paper No. 3111, National Bureau of Economic Research, September 1989.

"Market Structure, Durable Goods, and Cyclical Fluctuations in Markups" (with I. Domowitz and B. Petersen), Mimeograph, Northwestern University, 1987.

"Finite Lifetimes, Borrowing Constraints, and Short-Run Fiscal Policy" (with K. Judd), Working Paper No. 2158, National Bureau of Economic Research, 1987.

GRANTS RECEIVED

"Institutional Investors, Boards of Directors, and Corporate Governance," Korn/Ferry, 1997.

"An Economic Analysis of Saving Incentives," Securities Industry Association, 1994, with Jonathan Skinner.

"Securities Transactions Taxes: Tax Design, Revenue, and Policy Considerations," Catalyst Institute, 1993.

"Precautionary Saving in the U.S. Economy," Bradley Foundation, 1989-1990, with Jonathan Skinner and Stephen Zeldes.

"Taxation, Corporate Leverage, and Financial Distress," Garn Institute for Finance, 1989-1990.

"Precautionary Saving in a Dynamic Model of Consumption and Labor Supply," National Science Foundation (Economics Group SES-8707997), 1987-1989, with Jonathan Skinner and Stephen Zeldes.

"Industrial Behavior and the Business Cycle: A Panel Data Study of U.S. Manufacturing," National Science Foundation (Economics Group SES-8420152), 1985-1987, with Ian Domowitz and Bruce Petersen.

"Efficient Contracting and Market Power: Evidence from the U.S. Natural Gas Market," Transportation Center, Northwestern University, Summer 1985.

"Constructing a Panel Data Base for Studies of U.S. Manufacturing," University Research Grants Committee, Northwestern University, 1985-1986.

"Economic Analysis of Multiple-Price Systems: Theory and Application," National Science Foundation (Regulatory Analysis and Policy Group, SES-8408805), 1984-1985.

"Contracting and Price Adjustment in Product Markets," University Research Grants Committee, Northwestern University, 1983-1984.

PAPERS PRESENTED

University Seminars

Bard College, Carleton, University of Chicago, Columbia, Emory, George Washington, Harvard, Illinois, Indiana, Johns Hopkins, Laval, University College (London), University of Kentucky, London School of Economics, MIT, University of Maryland, Miami University, University of Michigan, University of Minnesota, New York University, Northwestern, University of Pennsylvania, Princeton, University of Rochester, Stanford, University of Texas, University of Virginia, University of Wisconsin, and Yale.

Conference Papers Presented

American Council for Capital Formation, Washington, DC, June 1994.

American Economic Association, New Orleans, January 1997; San Francisco, January 1996; Washington, D.C., January 1995; Boston, January 1994; Anaheim, January 1993; Washington D.C., December 1990; Atlanta, December 1989; New York, December 1988; Chicago, December 1987; New Orleans, December 1985; Dallas, December 1984.

American Enterprise Institute, Conference Series on Social Insurance Reform, 1997-1998; Conference Series on Fundamental Tax Reform, 1995-1997; Conference on Distributional Analysis of Tax Policies, Washington, D.C., December 1993.

Association of Environmental and Resource Economists, Dallas, December 1984; San Francisco, December 1983.

Association of Public Policy Analysis and Management, New Orleans, October 1984; Philadelphia, October 1983.

Bipartisan Commission on Entitlement and Tax Reform, Washington, DC, June 1994.

Brookings Panel on Economic Activity, September 1994, April 1988, September 1987, September 1986, April 1986, September 1985.

Centre for Economic Policy Research Conference on Capital Taxation and European Integration, London, September 1989.

Conference on International Perspectives on the Macroeconomic and Microeconomic Implications of Financing Constraints, Centre for Economic Policy Research, Bergamo, Italy, October 1994.

Eastern Economic Association, Boston, March 1988; Boston, February 1983.

Econometric Society, New Orleans, January 1997; San Francisco, January 1996; Washington, D.C., January 1995; New Orleans, January 1992; Washington, December 1990; Atlanta, December 1989; New York, December 1988; Chicago, December 1987; New Orleans, December 1986; New York, December 1985; Boston, August 1985; Madrid, September 1984; San Francisco, December 1983; Pisa, August 1983.

Energy Modeling Forum, Stanford University, August 1983; February 1983; August 1982.

Federal Reserve Bank of Boston, Annual Economic Conference, North Falmouth, Massachusetts, June 1995.

Federal Reserve Bank of Kansas City Symposium on "Financial Market Volatility--Causes, Consequences, and Policy Responses," Jackson Hole, Wyoming, August 1988.

Federal Reserve Bank of St. Louis, Conference on Economic Policy, St. Louis, October 1994.

Hoover Institution, Conference on Fundamental Tax Reform, December 1995.

The Institute of Gas Technology, Washington, DC, May 1982.

The Institute of Management Science/Operations Research Society of America, Orlando, November 1983; Chicago, April 1983.

International Association of Energy Economists, Boston, November 1986; Philadelphia, December 1985; Bonn, June 1985; San Francisco, November 1984; Washington, DC, June 1983; Denver, November 1982; Cambridge (England), June 1982; Houston, November 1981.

International Conference on the Life Cycle Model, Paris, June 1986.

International Institute of Public Finance, Innsbruck, August 1984.

International Seminar on Public Economics, Amsterdam, April 1997.

National Academy of Sciences, February 1997.

National Association of Business Economists, Boston, September 1996; Dallas, September 1992; New Orleans, October 1987.

National Bureau of Economic Research - IMEMO Conference on the American Economy, Moscow, August 1989.

National Bureau of Economic Research Summer Institute, August 1997; July 1995; July 1994; July 1993; August 1992; July-August 1991; July-August 1990; July-August 1989; July-August 1988; July-August 1987; July-August 1986; July 1985; July 1984; July 1983.

National Bureau of Economic Research Conference on Asymmetric Information, Corporate Finance, and Investment, Cambridge, May 1989.

National Bureau of Economic Research Conference on Financial Crises, Key Biscayne, March 1990.

National Bureau of Economic Research Conference on Government Expenditure Programs, Cambridge, November 1986.

National Bureau of Economic Research Conference on International Taxation, Washington, DC, April 1994; Cambridge, January 1994; New York, September 1991; Nassau, Bahamas, February 1989.

National Bureau of Economic Research Conference on Macroeconomics and Industrial Organization, Cambridge, July 1988; Cambridge, July 1987; Cambridge, July 1986; Chicago, November 1985.

National Bureau of Economic Research Conference on Pensions, Baltimore, March 1985; San Diego, April 1984.

National Bureau of Economic Research Conference on Productivity, March 1988; March 1987.

National Bureau of Economic Research Conference on Public Economics, Cambridge, April 1994, April 1993, November 1991, April 1991, March 1988, November 1987, March 1987.

National Bureau of Economic Research Conference on Tax Policy and the Economy, Washington, DC, November 1996, November 1994, November 1991, November 1989.

National Bureau of Economic Research Trans-Atlantic Public Economics Seminar, Turin, May 1994.

National Tax Association/Tax Institute of America, Arlington, May 1992; Seattle, October 1983.

U.S. House of Representatives, Committee on Ways and Means, Washington, DC, April 1997, June 1996, July 1992.

U.S. Senate Committee on Finance, Washington, DC, February 1997, January 1995, January 1992, December 1981.

ATTACHMENT 2

WILLIAM HERNDON LEHR

Curriculum Vitae

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EDUCATION

Ph.D., Economics, Stanford University, 1992.
M.B.A., with distinction, The Wharton School, University of Pennsylvania, 1984.
M.S.E., Chemical Engineering, University of Pennsylvania, 1984.
B.S., Chemical Engineering, *cum laude*, University of Pennsylvania, 1979.
B.A., European History, *magna cum laude*, University of Pennsylvania, 1979.

Academic Honors: Graduate Student Research Award, Telecommunications Policy Research Conference, 1991; Lynde and Harry Bradley Foundation Fellowship, 1990; Stanford Fellowship, 1987

PROFESSIONAL EXPERIENCE

Graduate School of Business, Columbia University (New York, NY), Assistant Professor of Finance and Economics, July 1991 to present.

RAND Corporation (Santa Monica, CA), Graduate Student Intern, Summer 1990.

Economic Analysis Group, Ltd. (Washington, DC), Senior Consultant, 1986-1987.

"Baghdad 2000" Master Development Plan (Baghdad, Iraq), Economist and Systems Analyst, 1985-1986.

M.C.I. Telecommunications (Washington, DC), Manager of Financial Analysis, 1985; Senior Financial Analyst, 1984.

Office of Management and Budget, National Security Division (Washington, DC), Graduate Student Intern, Summer 1983.

Putnam, Hayes and Bartlett (Cambridge, MA), Research Associate 1980-1982.

TEACHING EXPERIENCE

Economics and Strategy in Media Industries, 1993-1995
Economics of Strategic Management, 1993
Managerial Economics, 1991-1995

Theory of the Firm (teaching assistant for Paul Milgrom), 1989

PAPERS and PUBLICATIONS

"Computer Use and Productivity Growth in Federal Government Agencies, 1987 to 1992", with Frank Lichtenberg, National Bureau of Economic Research, Working Paper #5616, June 1996.

"The Political Economy of Congestion Charges in Packet Networks", with Martin Weiss, forthcoming in Telecommunications Policy.

"Compatibility Standards and Interoperability: Lessons from the Internet", in Standards Policy for Information Infrastructure, edited by B. Kahin and J. Abbate, Harvard Information Infrastructure Project, Cambridge MA: MIT Press, 1995.

Quality and Reliability of Telecommunication Infrastructure (editor), Hillsdale, NJ: Lawrence Erlbaum Associates, 1995.

"The Quality of Complex Systems and Industry Structure", with Nicholas Economides, in Quality and Reliability of Telecommunication Infrastructure, edited by William Lehr, Hillsdale, NJ: Lawrence Erlbaum Associates, 1995.

"Compatibility Standards and Industry Competition: Two Case Studies", Economics of Innovation and New Technology.

"Quality Choices in a Network of Networks", forthcoming in *Private Networks and Public Objectives* (Eli Noam, editor), Columbia University.

"ISDN in the U.S.A.: Is it Arriving at Last?", in *ISDN in the USA, Japan, Singapore and Europe*, edited by Bernd Lange, The European Institute for the Media, forthcoming.

"Compatibility Standards and the Internet", working paper, September 1992,

"Standardization: Understanding the Process", Journal of the American Society for Information Science, vol 43, no 8 (September 1992) 550-555.

"Voluntary Standard Setting, Institutions and the Allocation of Technical Capabilities", working paper, July 1992.

"ISDN and the Small User: Regulatory Policy Issues", with Roger Noll, in Integrated Broadband Networks: the Public Policy Issues, edited by Martin Eiton, North-Holland, New York, 1991, 147-178.

"Incremental Costs and the Efficient Pricing of Local Exchange Services: A Synopsis of the Incremental Cost Conference", Center for Economic Policy Research Working Paper #175, Stanford University, January 1990.

"Vertical Integration in the Cable Television Industry: the Issue of Content/Carrier

Separation", WD-5100-MF, RAND Corporation, Santa Monica, CA, August 1990.

"ISDN: an Economists' Primer to a New Telecommunications Technology", working paper, February 1989.

WORK In PROGRESS

"Economics of Anticipatory Standard Setting", working draft, presented at the European Association of Research in Industrial Economics (E.A.R.I.E.) Conference, Chania, Crete, September 1994.

"Political Economics of Voluntary Standard Setting", working draft, January 1992.

ATTACHMENT 3

AREA CALLING PLAN PRINCIPLES

The following Area Calling Plan ("ACP") Principles ("ACP Principles") are agreed upon by the undersigned and are adopted in conjunction with the South Carolina IntraLATA Depooling Plan ("the Plan"), dated March 12, 1993, or any amended version thereof. Should the Plan, or an amended version thereof, not be finally implemented, the ACP principles contained herein also will not be implemented. The ACP principles are summarized as follows:

1. If LECs implement an Area Calling Plan ("ACP") or EAS Plan (offered under a Company's local tariff or any tariff not concurred in by the toll provider) the traffic will no longer be subject to provisions of this Plan. It is agreed that if one company implements an ACP and another LEC does not, then the company that implements the ACP will pay that LEC for terminating ACP service based on a total company composite of the LEC's switched access traffic sensitive rates.

Additionally, Southern Bell also agrees to provide a "floor level" of terminating CCL access revenues, applicable to ACP traffic originated in their exchanges, to Coalition Members for the term of this Agreement. The "floor level" is defined as the level of revenue from the base period as calculated in Attachment 1, paragraph 2.

When two LECs implement ACPs between the two companies, terminating access will be paid, except as indicated below. The rates for each company will represent the total company composite of the respective company's switched access traffic sensitive rates. For those ACP minutes that are offered to a customer on an optional flat rate basis (including capped usage) no settlement will be applicable, consistent with current procedures.

An intertoll switching rate element of \$.004 per access minute will be applicable in those instances when an intermediate company that is different than the originating or terminating company is involved in an ACP call.

2. A mechanism to protect all Coalition members against the potential of abnormally high losses that might result from certain members implementing an ACP in response to another ACP is determined to be necessary.

Any Coalition member may request relief from the other parties hereto by demonstrating an abnormally high loss and the relief sought. The parties hereto shall then determine, by majority vote, the degree of any relief that should be granted to the requesting Coalition member. Any relief granted shall be apportioned to the other parties hereto by way of number of access lines.

It is not the intent to define what constitutes an abnormally high loss; however, as an example, the parties agree that a local rate in excess of the equivalent Southern Bell rate will constitute an appropriate demonstration of need for relief.

3. All LECs agree to provide a duplicate record of all 1+, 0+ and 0- originating intraLATA traffic to a centralized point to accommodate the Plan and future ACP offerings.

Dated this 12th day of March 1993.

BELLSOUTH TELECOMMUNICATIONS,
INC.

By: 

SOUTH CAROLINA TELEPHONE
COALITION

By: 

GTE SOUTH, INC. AND
CONTEL OF SOUTH CAROLINA, INC.
d/b/a GTE South Carolina

By: 

UNITED TELEPHONE OF THE
CAROLINAS, Inc.

By: 

G

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of

Application by BellSouth Corporation,)	
BellSouth Telecommunications, Inc.,)	
and BellSouth Long Distance, Inc. for)	CC Docket No. 97-208
Provision of In-Region, InterLATA)	
Services in South Carolina)	

AFFIDAVIT OF

PATRICIA A. McFARLAND

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT G

Public Version

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AFFIDAVIT OF PATRICIA A. McFARLAND

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**Before the
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Provision of In-Region, InterLATA)	
Services in South Carolina)	

**AFFIDAVIT OF
PATRICIA A. McFARLAND
ON BEHALF OF AT&T CORP.**

Patricia A. McFarland, being first duly sworn upon oath, hereby deposes and states as follows:

1. My name is Patricia A. McFarland. My business address is 1200 Peachtree Street, N.E., Suite 5070, Atlanta, Georgia 30309. I am employed by AT&T Corp. ("AT&T") as Manager-Regulatory Chief Financial Officer ("RCFO") Organization. As such, I am responsible for AT&T regulatory financial activities in a number of states and for a number of subject-matter areas, such as local exchange carrier ("LEC") cost analysis functions.

2. I have a degree in Business Administration with a concentration in Accounting from Oglethorpe University in Atlanta, Georgia. In 1968, I began my career at Pacific Telephone Company in San Francisco where I held a variety of Operator Services staff and

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line positions. I primarily performed payroll, budgeting, and scheduling functions. At divestiture, I transferred to AT&T and assumed responsibility for LEC billing in conjunction with California Operator Services Shared Network Facilities Agreements ("SNFA"). In 1985, I accepted the position of Assistant Manager-Accounting Regulatory Support responsible for AT&T financial regulatory matters for Oregon and Washington. In May 1991, I transferred to my present organization in Atlanta, Georgia. Initially, I was responsible for AT&T financial regulatory matters for the South Central states. In 1995, I accepted my current position as Manager-RCFO in Atlanta.

3. I have testified with regard to the retail costs the incumbent will avoid in the provision of wholesale local service on behalf of AT&T in recent arbitration proceedings in Louisiana, Tennessee, Alabama and Kentucky.

4. The purpose of my affidavit is to show that BellSouth has not satisfied its burden of proof with respect to the resale requirements of the Act and competitive checklist. First, BellSouth has not demonstrated that the wholesale rate purportedly available under its SGAT complies with the requirements of Sections 251(c)(4)(A) and 252(d)(3). Indeed, as explained below, BellSouth's SGAT rate does not in fact comply with the Act's standards.

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5. Second, BellSouth may seek to impose in South Carolina as it has elsewhere a non-recurring charge for customer migration to a reseller which is grossly in excess of forward-looking costs, thus directly violating the Commission's ruling that resale-related, non-recurring charges having no retail equivalent must be TELRIC-based.

6. Third, BellSouth does not allow resale of the hundreds of "Contract Service Arrangements" ("CSAs") it offers in South Carolina. BellSouth's SGAT expressly excludes CSAs from its wholesale rate provisions. This exclusion violates the Commission's prior holdings that all services offered to end-users, including contract services, must be offered for resale at wholesale rates. Moreover, BellSouth has taken the position that each CSA is not available to any customer other than the one for which it was initially developed. In other words, BellSouth not only prohibits a CLEC from aggregating the traffic of its end-user customers to qualify for the CSA, but also prohibits the CLEC from reselling the CSA to a customer who could individually qualify for the offering. These restrictions are presumptively unreasonable under the Act and the Commission's Rules, and BellSouth has made no effort to rebut this presumption.

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I. THE ROLE OF RESALE IN BRINGING COMPETITION TO LOCAL EXCHANGE MARKETS

7. Resale of local telecommunications services is one of the three means of entry made possible by the Act. Market entry via resale is generally the lowest cost and lowest risk market entry strategy available to CLECs under the Act, thus permitting rapid start-up. As a CLEC gains presence in the market from its resale operations, it will have increasing incentives to purchase unbundled network elements from the incumbent carrier and to invest in its own network facilities, enabling the CLEC to compete more vigorously in the local market by providing new and innovative services at lower costs. The history of interexchange competition, in which some competitors that began almost exclusively with resale are now substantially facilities-based, is a dramatic and highly relevant example of how this process can work.

II. PRECONDITIONS TO SUCCESSFUL RESALE ENTRY AND THE APPLICABLE LEGAL STANDARDS

A. The Act

8. As Congress recognized, new entrants to local markets will incur expenses of their own in providing retail services to end-users, and should not also be called upon to incur any of the ILEC's expenses for these same kinds of retail services. Thus, the Act expressly requires that all retail costs that will be avoided by ILECs must be reflected in the wholesale

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discount; the wholesale rates are not to reflect the ILECs' costs of "marketing, billing and collection," nor are they to reflect any "other costs that will be avoided." 47 U.S.C. § 252(d)(3).

9. As Congress also recognized, for resale to be an effective entry strategy for CLECs, an ILEC must "offer for resale at wholesale rates any telecommunications service that [it] provides at retail." 47 U.S.C. § 251(c)(4)(A). Hence, no category of telecommunications service is exempt from the Act's resale pricing requirements. Section 251(c)(4)(B) also precludes ILECs such as BellSouth from imposing "unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service."

B. The Local Competition Order

10. In its proceeding to implement the local competition provisions of the Act, the Commission requested comment on the proper methodology to calculate the avoided cost discount that would be used in establishing wholesale rates.¹ As the Commission noted in Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order (1996) ("Local Competition Order"), "avoided cost studies can produce widely varying results, depending in large part on how the

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking (1996) at ¶ 173.

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proponent of the study interprets the language of section 252(d)(3)." Id. at ¶ 909.

Accordingly, based on the record compiled in that proceeding, the Commission issued certain rules to govern calculation of the avoided cost discount.

11. One of the key wholesale rate issues resolved by the Commission in the Local Competition Order was "whether section 252(d)(3) embodies an 'avoided' cost standard or an 'avoidable' cost standard." Local Competition Order at ¶ 911. Noting that there had been "considerable debate" on this issue, the Commission expressly "reject[ed]" the position taken by ILECs, including BellSouth, that the "[I]LEC must actually experience a reduction in its operating expenses for a cost to be avoided." Id. According to the Commission, to sustain the position that an avoided cost standard is appropriate, one would have to believe that "Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable." Id. Declaring itself unable to subscribe to any such belief, the Commission ruled "that 'the portion [of the retail rate] . . . attributable to costs that will be avoided' includes all of the costs that the LEC incurs in maintaining a retail, as opposed to a wholesale business. In other words, the avoided costs are those that an incumbent LEC would no longer incur if it

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were to cease retail operations and instead provide all of its services through resellers." Id.
at 911 (emphasis added).²

12. In addition, the Commission adopted "a minimum set of criteria for avoided cost studies used to determine wholesale discount rates." Id. at ¶ 909. According to the Commission, these criteria "are designed to ensure that states apply consistent interpretations of the 1996 Act in setting wholesale rates based on avoided cost studies which should facilitate swift entry by national and regional resellers which may include small entities." Id. While the Commission cast some of these criteria as "rebuttable presumptions," the Commission made clear that states were eventually required "to conduct full scale avoided cost studies that comply with the criteria" set forth in the Local Competition Order. Id. at ¶ 908.

² Notwithstanding BellSouth's repeated claims to the contrary, the Commission did not depart from the "will be avoided" standard of Section 252(d)(3). Rather, the Commission adopted a reasonably avoidable cost standard to provide some objectivity to the analysis of what costs "will be avoided." Otherwise, an ILEC could simply decline to avoid costs that it could reasonably avoid in a wholesale environment and thus defeat the whole purpose of the resale provisions of the Act by requiring CLECs to pay for services they do not need, want nor use. CLECs' wholesale costs would thereby be artificially increased to the CLECs' competitive detriment while any resale costs the ILEC would continue to incur would be subsidized to the ILEC's competitive advantage. Clearly, the development of effective resale competition in such circumstances would be seriously impeded.

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13. With respect to restrictions on services subject to resale, the Commission squarely rejected arguments by BellSouth and others that it should "prohibit[] resale of contract service arrangements" altogether. Comments of BellSouth filed in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 (May 16, 1996). As the Commission found, Section 251(c)(4) of the Act

makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act.

Id. at ¶ 948 (emphasis added). The Commission also rejected arguments "that the offerings under section 251(c)(4) should not apply to volume-based discounts," and concluded that "[i]f a service is sold to end users, it is a retail service, even if it is priced as a volume-based discount off the price of another retail service." Local Competition Order at ¶ 951.

C. Subsequent Decisions

14. As the Commission is aware, the Eighth Circuit has since vacated the pricing provisions of the Local Competition Order, including its rulings on wholesale pricing. Iowa Utilities Bd. v. FCC, 120 F.3d 753, 793-799 (8th Cir. 1997). The court did so, however,

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solely on the ground that the Commission does not have jurisdiction to prescribe pricing standards that would bind state commissions in arbitration proceedings conducted pursuant to Section 252 of the Act. The court did not reach the question of whether or not those standards are consistent with the language and purposes of the Act. Moreover, in its decision issued August 19, 1997, in a Section 271 proceeding involving Ameritech Michigan, CC Docket No. 97-137, Memorandum Opinion and Order (released August 19, 1997) ("Ameritech Michigan Order"), the Commission made it clear that it will continue to observe the pricing standards set forth in the Local Competition Order in proceedings under Section 271. With respect, in particular, to pricing for resold services, the Commission reaffirmed its view that, consistent with the basic purposes of the Act, "resellers should not be required to compensate a BOC for the cost of services, such as marketing, that resellers perform." Id. at ¶ 295.

15. In contrast to its treatment of the Commission's resale pricing rules, the Eighth Circuit affirmed the Commission's rules with regard to resale restrictions -- in particular, the requirement that "an [I]LEC shall not impose restrictions on the resale by a requesting carrier [i.e., a CLEC] of telecommunications services." 47 C.F.R. § 51.613. See Iowa Utilities Bd., 120 F.3d. at 819. Although certain exceptions to that requirement are set forth in the Commission's regulations, no such exceptions apply to contract service arrangements. In affirming the Commission's rules on resale restrictions, the Eighth Circuit expressly

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rejected objections posed by BellSouth and others "to the FCC's determination that discounted and promotional offerings are 'telecommunication service[s]' that are subject to resale requirements of subsection 251(c)(4)." Id. The Eighth Circuit also held that "the FCC has jurisdiction to issue these particular rules and . . . its determinations are reasonable interpretations of the Act." Id.

16. In its recent order preempting certain provisions of Texas law, the Commission reaffirmed its holding in the Local Competition Order that "restrictions on resale are presumptively unreasonable and violative of Section 251(c)(4)(B) of the Act." In the Matter of Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Public Utility Regulatory Act of 1995, CCPPol 96-13, Memorandum Opinion and Order released October 1, 1997, at ¶ 223 ("Texas Preemption Order"). Based on SBC's failure to rebut the presumption, the Commission then preempted SBC's continuous property restriction as an unreasonable or discriminatory limitation on resale contrary to the Act and its implementing regulations. Id.

III. **BELLSOUTH'S APPLICATION FAILS TO PROVIDE ANY EVIDENCE TO
ENABLE THE COMMISSION TO EVALUATE THE LAWFULNESS OF ITS
WHOLESALE DISCOUNT**

17. In the Ameritech Michigan Order, the Commission reaffirmed and "emphasize[d] the requirement that a BOC's section 271 application must be complete on the day it is